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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/594,882

09/29/2006

Nils Alveby

19200-000068/US

3296

30593

7590

12/19/2008

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EXAMINER

HAYES, KRISTEN C

ART UNIT

PAPER NUMBER

3643

MAIL DATE

DELIVERY MODE

12/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/594,882	Applicant(s) ALVEBY, NILS	
	Examiner Kristen C. Hayes	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20061207, 20060929</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3643

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II, claims 13-24 in the reply filed on 09/04/2008 is acknowledged. The traversal is on the ground(s) that there is not a serious burden on the Examiner to examine all the claims. This is not found persuasive because it appears applicant's arguments are drawing to US restriction rules of 37 CFR 1.141-146 whereas this is a national stage application that would follow appropriate international rules. Further as evidenced below in the rejection of claim 13, there is no special technical feature and therefore no unity of invention. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 13-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 13 recites the limitation "said milking animal" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 13 recites the limitation "the vacuum" in line 8. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 13 recites the limitation "said animal" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3643

7. Claim 15 recites the limitation "said vacuum difference" in line 2. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 15 recites the limitation "the milking process" in line 2. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 15 recites the limitation "the momentary milk flow" in line 3. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 16 recites the limitation "the milking" in line 2. There is insufficient antecedent basis for this limitation in the claim.

11. Claim 16 recites the limitation "the expected milking time" in line 2. There is insufficient antecedent basis for this limitation in the claim.

12. Claim 16 recites the limitation "the particular udder quarter" in line 2-3. There is insufficient antecedent basis for this limitation in the claim.

13. Claim 17 recites the limitation "the expected milk yield" in line 2. There is insufficient antecedent basis for this limitation in the claim.

14. Claim 18 recites the limitation "the vacuum level" in line 4. There is insufficient antecedent basis for this limitation in the claim.

15. Claim 19 recites the limitation "the vacuum level" in line 2. There is insufficient antecedent basis for this limitation in the claim.

16. Claim 20 recites the limitation "said vacuum level" in line 2. There is insufficient antecedent basis for this limitation in the claim.

17. Claim 21 recites the limitation "the vacuum difference" in line 3. There is insufficient antecedent basis for this limitation in the claim.

18. Claim 21 recites the limitation "said vacuum level" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3643

19. Claim 22 recites the limitation "said vacuum level" in line 2. There is insufficient antecedent basis for this limitation in the claim.

20. Claim 23 recites the limitation "said vacuum level" in line 2. There is insufficient antecedent basis for this limitation in the claim.

21. Claim 23 recites the limitation "the average milking animal" in line 4. There is insufficient antecedent basis for this limitation in the claim.

22. Claim 23 recites "animals having a higher milk flow than the average milking animal". It is unclear as to what the milk flow of the average milking animal is. The statement leaves the claim vague and indefinite.

Claim Rejections - 35 USC § 102

23. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

24. Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Oosterling WO 98/28969.

25. Regarding claim 13, Oosterling discloses a milking machine comprising a first teat cup (1) comprising a teat cup shell (22) and a teat cup liner (23) with the teat cup liner comprising a lower end connecting to a milking vacuum source (V), and a top end forming a space and a teat entrance (Oosterling, Figure 2b) in which a teat of a milking animal is to be introduced, said teat cup liner further comprising an inlet to the space connected to a source (18)(Oosterling, Figure 2a), wherein control means controlling the vacuum in the space in relation to a milking criteria of the animal (Oosterling, page 9: lines 10-13).

Art Unit: 3643

26. Regarding claim 14, Oosterling further discloses animal identification means provided to detect the identity of a milking animal and relate the identity to at least one milking criteria (Oosterling, page 2: lines 22-26).

27. Claims 13, 15, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Duke US 2007/0215053.

28. Regarding claim 13, Duke discloses a milking machine comprising a first teat cup (1) comprising a teat cup shell (2) and a teat cup liner (3) with the teat cup liner comprising a lower end connecting to a milking vacuum source (Duke, ¶0037: lines), and a top end forming a space (9) and a teat entrance (7) in which a teat of a milking animal is to be introduced, said teat cup liner further comprising an inlet (13) to the space connected to a source (14)(Duke, Figure 2), wherein control means controlling the vacuum in the space in relation to a milking criteria of the animal (Duke, ¶0008: lines 9-14).

29. Regarding claim 15, Duke further discloses the vacuum difference being dynamically varied during the milking process depending upon the momentary milk flow (Duke ¶0056: lines 20-29).

30. Regarding claim 16, Duke further discloses the milking criteria being the expected time to finish the milking for the particular udder quarter being milked (Duke, ¶0008: lines 9-14).

31. Regarding claim 18, Duke further discloses the milking machine comprising one teat cup for each udder quarter to be milked (Duke, Figure 1) and said control means (103).

32. Claims 13, 19-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Innings US 2005/0072362.

33. Regarding claim 13, Innings discloses a milking machine comprising a first teat cup comprising a teat cup shell (201) and a teat cup liner (202) with the teat cup liner comprising a lower end connecting to a milking vacuum source (207), and a top end forming a space and a

Art Unit: 3643

teat entrance (Innings, Figures 2a, 2b) in which a teat of a milking animal is to be introduced, said teat cup liner further comprising an inlet (203) to the space connected to a source (Innings, Figures 2a, 2b), wherein control means controlling the vacuum in the space in relation to a milking criteria of the animal (Innings, ¶0028).

34. Regarding claims 19 and 20, Innings further discloses the vacuum level in the space is set at start of milking and dynamically during milking (Innings ¶0026: lines 13-15).

35. Regarding claim 21, Innings further discloses vacuum difference measuring means and the control means in communication with the vacuum difference measuring means (Innings, ¶0028).

36. Regarding claim 22, Innings further discloses the vacuum level being set to a first value during a first part of the milking and to a second value during a second part of the milking (Innings, ¶0026: lines 13-15).

37. Regarding claim 23, Innings further discloses the vacuum level in the space being set (Innings, ¶0056: lines 13-15).

38. Regarding claim 24, Innings further discloses the teat cup shell or teat cup liner comprising a sensor (204).

Claim Rejections - 35 USC § 103

39. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

40. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duke US 2007/0215053.

Art Unit: 3643

41. Regarding claim 17, Duke discloses the device of claim 13 but does not disclose the milking criteria to be expected milk yield. However, Duke discloses the milking criteria to be milk flow, which can be used to calculate milk yield (Duke, ¶0052: lines 1-5). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Duke so that the milking criteria was the expected milk yield to ensure maximum efficiency of the milking machine.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Hayes whose telephone number is 571-270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH
16 December 2008

Peter Poon
Examiner
Art Unit 3643

Application/Control Number: 10/594,882

Page 8

Art Unit: 3643

/Peter M. Poon/
Supervisory Patent Examiner, Art Unit 3643